

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

V.

GEORGE WEGERS, et al.,

## Defendants.

CASE NO. CR05-0231C

## ORDER

This matter comes before the Court on Defendant Bernard Ortman's motion to reconsider (Dkt. 57) the Court's denial of his motion for a bill of particulars as to Count 3 of the original indictment No. 351). Having considered the papers submitted by Defendant on his motion for reconsideration, original and superseding indictments, and the papers submitted by the parties on Defendant's original motion, the Court GRANTS Defendant's motion for reconsideration but DENIES the underlying motion for a bill of particulars.

## **I. Motion for Reconsideration**

Defendant Ortman filed his motion for a bill of particular as to Count 3 of the original indictment on August 4, 2005 (Dkt. No. 247). Count 3 alleged a conspiracy to tamper with a witness identified as "G.B.," and to discourage other Bandidos from discussing with federal investigators the alleged

1 kidnaping of "S.S." (See Dkt. No. 1, at 9–11.) Ortman argued that this count was so lacking in  
2 substance and detail that he could not prepare a defense, and specifically that the government named him  
3 as a co-conspirator but failed to allege that he had engaged in any overt acts in furtherance of the  
4 conspiracy.

5 On September 1, 2005, before the Court ruled on Ortman's motion, the government filed a First  
6 Superseding Indictment ("FSI") that represented a substantial revision and augmentation of the original  
7 indictment. In the FSI, Ortman is one of twenty-eight defendants and is charged in five of the thirty-six  
8 counts. The allegations in Count 3 of the original indictment were reorganized into two separate counts  
9 in the FSI: the conspiracy to tamper with witness "G.B." was recaptioned as Count 8, while the  
10 conspiracy to discourage cooperation with federal investigators was recaptioned as Count 6. (See FSI  
11 18–20.) On September 12, 2005, the Court entered a minute order denying Ortman's motion, finding  
12 that his motion was moot because he was no longer named in Count 8 of the FSI. (See Dkt. No. 351.)

13 Under Local Rule CrR 12(c)(11)(A), the Court will grant motions for reconsideration only on a  
14 showing of manifest error in the prior ruling. Ortman timely filed his motion, and argues that  
15 reconsideration is warranted here notwithstanding the fact that he is no longer named in Count 8, because  
16 he remains a named co-conspirator in Count 6. He further argues that the government has still failed to  
17 allege that he engaged in any overt acts in furtherance of that conspiracy, and therefore that he remains  
18 unable to prepare a defense to these charges.

19 The Court agrees that Count 6 of the FSI is substantially similar to Count 3 of the original  
20 indictment, and therefore that the FSI did not render moot the bases for Ortman's original motion for a  
21 bill of particulars. Accordingly, the Court GRANTS Ortman's motion for reconsideration.

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26 ORDER – 2

1       **II. Motion for Bill of Particulars**

2       Having granted Defendant's motion for reconsideration, the Court will adjudicate Ortman's  
 3 original motion for a bill of particulars on the merits, as applied to Count 6 of the FSI. The decision to  
 4 order a bill of particulars under Federal Rule of Criminal Procedure 7(f)<sup>1</sup> is entrusted to the sound  
 5 discretion of the trial court. *Wong Tai v. United States*, 273 U.S. 77 (1927). The purpose of a bill of  
 6 particulars is threefold: (1) to inform the defendant of the nature of the charges against him, (2) to  
 7 minimize the danger of surprise at trial, and (3) to permit the defendant to assert double jeopardy as a  
 8 defense when appropriate. *United States v. Ayers*, 924 F.2d 1468, 1483 (9th Cir. 1991). An indictment  
 9 complies with Rule 7 so long as it "state[s] the essential facts constituting the offense charged," even if it  
 10 "allege[s] that the means by which the defendant committed the offense are unknown or that he  
 11 committed it by one or more specified means." *United States v. Markee*, 425 F.2d 1043, 1047-48 (9th  
 12 Cir. 1970). A defendant may not seek a bill of particulars to circumvent the scope of discovery permitted  
 13 under the Federal Rules of Criminal Procedure, nor may he seek a bill simply as a discovery device. *See*  
 14 24 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 607.07[1], at 607-45 (3d ed. 2005) (citing  
 15 *Cooper v. United States*, 282 F.2d 527, 532 (9th Cir. 1960)). Indeed, a bill of particulars is not necessary  
 16 if a conspiracy indictment provides sufficient information about the government's theory of the case and  
 17 the defendant is given significant discovery opportunities. *See Markee*, 425 F.2d at 1048.

18       The FSI alleges that Ortman is the president of the Missoula chapter of the Bandidos and reports  
 19 directly to national president Wegers. (FSI 6.) He is further described as occupying a position of  
 20 "significant authority and control" ("a trusted lieutenant in the enterprise"), and as responsible for  
 21 preventing rival biker gangs from establishing themselves in Montana. (*Id.*) And in Count 6, Ortman is

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 23       <sup>1</sup> Rule 7(f) provides, in relevant part: "The defendant may move for a bill of particulars before or  
 24 within 10 days after arraignment or at a later time if the court permits." In this case, Defendant filed his  
 25 motion on August 4, 2004—41 days after the arraignment—and did not seek the Court's permission to  
 26 file his motion late until he embedded a request in his reply brief. The Court nonetheless GRANTS  
 Defendant's leave to file the motion late and will consider the motion on its merits.

1 charged under 18 U.S.C. §§ 1512(b)(3) and 1512(k) as a member of a conspiracy to “hinder, delay, or  
2 prevent the communication to a law enforcement officer or judge of the United States of information  
3 relating to the commission or possible commission of a Federal offense.” 18 U.S.C. §§ 1512(b)(3); (see  
4 FSI 18–19.) Although Ortman is named as a member of the alleged conspiracy to discourage  
5 cooperation with the investigation of the kidnaping of S.S., he is not alleged to have committed any overt  
6 acts in furtherance of that conspiracy. (See FSI 18–19.)

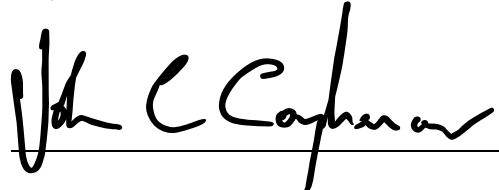
7 The government asserts, correctly, that Count 6 of the FSI is sufficiently detailed because the  
8 conspiracy section of the relevant statue, 18 U.S.C. § 1512(k), does not require an overt act in  
9 furtherance of the conspiracy. *See United States v. Tavelman*, 650 F.2d 1133, 1137 (9th Cir. 1981)  
10 (“Courts do not require as detailed a statement of an offense’s elements under a conspiracy count as  
11 under a substantive count.”); *see also United States v. Shabani*, 993 F.2d 1419, 1420 (9th Cir. 1993)  
12 (“The plain language of [the statute] does not mention an overt act. When we have interpreted other  
13 conspiracy statutes that are silent on the subject, we have held that proof of an overt act is  
14 unnecessary.”), *rev’d on other grounds*, 513 U.S. 10 (1994).

15 Moreover, the government has provided Ortman with access to voluminous discovery materials,  
16 including the search warrant pleadings, wiretap pleadings, and all audio recordings (both wiretap and  
17 consensual). (See Pl.’s Opp’n 5 & Ex. A.)

18 The Court’s decision here is driven by the language of the charging statute and the level of detail  
19 found within the FSI and Count 6 in particular, as well as the extensive discovery opportunities extended  
20 to Defendant and the continuing discovery process in this case. Under these circumstances, the Court  
21 cannot find at this stage of the case that Count 6 of the FSI is insufficiently informative to provide  
22 Defendant with adequate notice of the nature and cause of the conspiracy charge against him.

1 Accordingly, Defendant's motion for reconsideration is GRANTED and Defendant's motion for a  
2 bill of particulars as to Count 6 of the FSI is DENIED.

3 SO ORDERED this 11th day of October, 2005.

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UNITED STATES DISTRICT JUDGE